

Wyoming Administrative Rules

**Lands and Investments, Office of**

Land Commissioners, Board of

Chapter 5: Special Use Leasing

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**RULES AND REGULATIONS  
BOARD OF LAND COMMISSIONERS**

**Chapter 5**

**Special Use Leasing**

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5-114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and investments.
- (c) “Office” means the Office of State Lands and Investments.
- (d) “Special use” means any use of state land other than for grazing, agriculture, the extraction of minerals, or uses authorized under easements granted pursuant to Chapter 3 of the Rules and Regulations of the Board, or hunting, fishing and general recreational uses pursuant to Chapter 13 of the Rules and Regulations of the Board. Specifically, “Special use” includes leases for industrial, commercial and recreational (as defined by W.S.36-5-115) purposes.
- (e) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

Section 3. Lease Purposes

- (a) The Board may lease suitable state land for special uses under the provisions of this chapter.

Section 4. Existing Lease Impairment

- (a) The leased premises of a special use lease may coincide with the leased premises of an existing surface lease. Prior to issuing a special use lease, the Board shall

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determine whether or not the proposed special use lease would result in substantive impairment of an existing surface lease.

(b) Lessee consultation and consent. If the applicant obtains written consent from the existing lessee(s) to the issuance of a special use lease, the special use lease shall be deemed to not result in substantive impairment of the existing lease(s). Such consent shall also specify the division of mutually held lease rights, if any, as to the common surface area of the leases.

(c) Board determination. If the applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the special use lease, the Board shall determine whether the issuance of the proposed special use lease will substantively impair the existing lease(s). The Office shall notify the existing lessee(s) at least 20 days before the proposed special use lease is to be considered by the Board.

Section 5. Term of Leases

(a) Leases for special uses, including industrial, commercial and recreational purposes may be for any term, up to seventy five years, in the discretion of the Board.

(b) The Board shall determine that the proposed lease does not adversely affect its management goals, as set forth in its policy preamble to these rules and regulations, on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:

(i) An appraisal of the market value of the parcels;

(ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel;

(iii) The manageability of the parcel, individually and in combination with any adjoining state parcel;

(c) The Board must set the term of the lease for a period that does not exceed the anticipated economic life of the proposed lease use.

(d) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:

(i) All of the criteria within this section of the rules are still met; and

(ii) The overall term of the lease does not exceed seventy five years

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Section 6. Applications

(a) Forms. All applications to lease lands for special uses shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) Signature. If an application is signed by a party other than the applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Filing periods.

(i) For land under an expiring lease, applications shall be accepted for a period of 90 days prior to the expiration of the lease. If the expiration date falls on Saturday, Sunday or legal holiday, applications shall be accepted on the following workday. At least 90 days prior to the expiration of a lease, the Office shall mail a lease application form to the lessee or his authorized agent.

(d) Conflicting applications. If two or more applications to lease the same land for incompatible purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102 and Chapter 2 of these rules.

(e) Legal Description. All applications for special use leases will require a legal description which identifies the property proposed for lease. At the discretion of the office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning and Zoning Laws.

(i) The applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all applicable land use planning and zoning laws for the jurisdictions where the property is located; or

(ii) The Board may approve a lease application contingent upon the State's ability to acquire the necessary changes to the existing land use planning and zoning laws that will allow the intended uses on the state land within the lease.

Section 7. Rentals

(a) The annual rental for special use leases shall be:

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- (i) The amount bid by the applicant, if accepted by the Board, or
- (ii) As set by the Board as part of its decision in a case of conflicting applications.

However, in no event shall the rental be less than the minimum rate as established in subsection (b).

(b) The minimum annual rental shall be based on fair market value for the same or similar use of the land and any improvements owned by the State after an economic analysis is made. In cases where annual rental can not be established based on fair market value for the same or similar use of the land, the minimum rental shall not be less than \$250.00 or 5 1/2% of the appraised land value and any improvements owned by the State.

(c) All rental rates are subject to review and adjustment as specified in the special use lease.

(d) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be cancelled if the rent and late fee equal to ten percent (10%) of the annual rental is not received within thirty days following the date of the notice.

**Section 8. Board Approval of Assignments**

(a) A special use lease may not be assigned without prior approval of the Board. Lessees or their assignees shall request Board approval of proposed assignments, pursuant to W.S. 36-5-116, on a form provided by the Office.

(b) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

**Section 9. Subleases**

(a) The leased premises under a special use lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director. Such approval may be conditioned upon payment of additional rental. Lessees shall request approval of proposed subleases, by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Security Interests in Leases

(a) Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 11. Improvements

(a) The lessee shall request permission from the Director to construct or make any improvements not approved concurrently with the granting of the special use lease. The Director shall prepare an informational board matter pursuant to Chapter 1.

(b) Any applicant applying to lease state land shall pay to the Director the contributory value of improvements of any kind authorized under Section (a) of this section or the owner of the improvement may upon giving notice to the Director in writing remove only those improvements, within a 120 day period, which will not cause injury to the land.

Section 12. Cancellation

(a) The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 13. Surface Impact Payments

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment, provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee's share of the surface impact payment directly to the lessee and the Board's share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee's share shall be forty percent (40%), and the Board's share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Boards share shall be eighty percent (80%).

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(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual payments" means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administrations of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the privilege extended by the Board under the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board's rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board's rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee's share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.

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#### Section 14. Bonding Provisions

(a) The Board may require a bond as a condition of a special use lease sufficient to assure compliance with all terms and conditions of the lease. All bonds posted on special use leases may be used by the Board for payment for costs of reclamation and for compliance with all other terms and conditions of the lease and rules pertaining to the lease.

(b) The bond shall be in effect even if the board subsequently approves an assignment of the lease pursuant to Chapter 5, Section 8, of these rules.

(c) Additional bonding to cover risks not anticipated at the time of the original lease may be required at any time by the Director, provided the Director first gives the lessee 30 days written notice stating the reason and amount of the bond. The bond will remain in place until the unanticipated risk is diminished.

(d) Bonds may be accepted in any of the following forms at the discretion of the Director:

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the “Board of Land Commissioners”, with a state or federally insured financial institution in Wyoming. The lessee shall be entitled to all interest payments.

(iii) Other forms of surety as may be acceptable to the Director.

(e) The Director shall prepare an informational board matter pursuant to Chapter 1 whenever additional bonding has been required under (c) in this section.